

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

<b>(1) VANESSA D. MILLER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b>CIVIL ACTION NO. 12-387-D</b>
	)	
<b>(1) THE LINCOLN NATIONAL LIFE INSURANCE COMPANY,</b>	)	
	)	
<b>Defendant.</b>	)	

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**NOTICE OF REMOVAL**

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**COMES NOW** defendant, The Lincoln National Life Insurance Company (“Lincoln National” or “Defendant”), by and through its counsel, and pursuant to 28 U.S.C. § 1332 and § 1441, as amended, hereby gives notice of the removal of this action to the United States District for the Western District of Oklahoma. As grounds for this removal, Lincoln National states as follows:

1. On or about March 15, 2012, Vanessa D. Miller (“Plaintiff”), commenced a civil action against The Lincoln National Life Insurance Company in the District Court of Oklahoma County, Oklahoma, now pending as Case No. CJ-2012-1632. The District Court of Oklahoma County, Oklahoma is a state court within this judicial district.

2. A copy of the District Court of Oklahoma County's file is attached hereto (**Exhibit 1:** State Court Docket Sheet, **Exhibit 2:** Entry of Appearance, **Exhibit 3:** Summons, **Exhibit 4:** Petition, **Exhibit 5:** Plaintiff's Interrogatories and Request for Production of Documents to Defendant, **Exhibit 6:** Summons Returned). There have been no other process, pleadings or orders served to date other than those attached.

3. This notice of removal is timely pursuant to 28 U.S.C. § 1446(b), which provides, in pertinent part, as follows:

The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has been filed in court and is not required to be served on the defendant, whichever period is shorter.

4. The Summons and Complaint to Lincoln National were served on March 21, 2012. Therefore, this notice of removal is timely because it was filed within thirty (30) days of service of the summons and complaint.

5. This case is properly removable pursuant to 28 U.S.C. § 1441, which provides, in pertinent part, as follows:

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or

the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

28 U.S.C. § 1441(a)-(b).

### **I. DIVERSITY OF CITIZENSHIP**

6. This action is properly removable under 28 U.S.C. § 1441(a) and (b) because the United States District Court has original jurisdiction of this case under 28 U.S.C. 1332(a), as amended, which provides, in pertinent part, as follows:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between - -

(1) citizens of different States . . . .

7. On information and belief, Plaintiff is a citizen of Oklahoma.  
(Petition, ¶ 1)

8. Lincoln National is not a citizen of Oklahoma. Lincoln National is now, and was at the time of the commencement of this action, an insurance company organized and existing under the laws of the State of Indiana with its

principal place of business in the State of Indiana. (Russo Decl., **Exhibit 7**). Therefore, complete diversity of citizenship exists.

## **II. AMOUNT IN CONTROVERSY**

9. The amount in controversy in this action clearly exceeds the sum or value of \$75,000, exclusive of interest and costs.

10. In the Petition, Plaintiff expressly demands judgment in excess of \$75,000. (*See* Petition at p. 2). Accordingly, the amount in controversy in this action clearly exceeds the \$75,000 jurisdictional threshold.

## **III. ALL OTHER REQUIREMENTS FOR REMOVAL ARE SATISFIED**

11. This case is a civil action within the meaning of the Acts of Congress relating to the removal of causes.

12. Lincoln National has heretofore sought no similar relief.

13. A copy of this notice is being filed with the Clerk of the District Court of Oklahoma County, Oklahoma, as provided under 28 U.S.C. § 1446. Lincoln National is also giving prompt written notice to Plaintiff of the filing of this Notice of Removal.

**WHEREFORE, PREMISES CONSIDERED,** Defendant The Lincoln National Life Insurance Company requests that this Court take jurisdiction of this action and issue all necessary orders and process to remove this action from the

District Court of Oklahoma County, Oklahoma, to the United States District Court  
for the Western District of Oklahoma.

DATED this 10th day of April, 2012.

Respectfully submitted,

s/ Gary L. Howard

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*Attorneys for Defendant The Lincoln  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have electronically submitted the foregoing to the Clerk of Court using the following email address, [newcases@okwd.uscourts.gov](mailto:newcases@okwd.uscourts.gov), and also served on the following by placing same in the U.S. Mail, postage prepaid and properly addressed, this 10th day of April, 2012:

Chris Harper  
Phillip P. Owens, II  
Chris Harper, Inc.  
P.O. Box 5888  
Edmond, OK 73083-5888

s/ Gary L. Howard  
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OF COUNSEL